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OFFICE OF PETITIONS

In re Application of :
Draghia-Akli et al. : DECISION ON PETITION TO
Application No. 10/699597 : WITHDRAW HOLDING OF
Filed: 10/30/2003 : ABANDONMENT
Attorney Docket No. :
108328.00161 (AVSI-0027) :

This is a decision on the petition filed on 25 May, 2007, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES ("the Notice") mailed on 6 July, 2006, which set a one (1) month shorted statutory period for reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

Petitioners assert that the Notice mailed on 6 July, 2006, was never received.

In the absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Notice was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the

Office communication was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice may have been lost after receipt rather than a conclusion that the Notice was lost in the mail.

A review of the record indicates that the Notice was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice on the part of the United States Patent and Trademark Office.

In support, the petition includes a statement from the practitioner, T. Ling Chwang, Reg. No. 33,590, stating that the Notice was not received by the practitioner, and attesting to the fact that a search of the file jacket indicates that the Office action was not received. A copy of the docket record for the instant application, where the non-received Office action would have been entered had it been received and docketed, is attached.


The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, any Notice of Abandonment is vacated, and the holding of abandonment withdrawn.

The petition is GRANTED.

It is noted that applicant has filed a response to the Notice mailed on 6 July, 2006, with the present petition. As such the Notice will not be remailed.

The application file is being referred to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.


Douglas I. Wood
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